
A BILL FOR AN ACT

RELATING TO COURT-ORDERED PAYMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 601-17.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§601-17.5 Collection of delinquent court-ordered**
4 **payments.** The judiciary [~~may~~] shall contract with a collection
5 agency bonded under chapter 443B or with a licensed attorney to
6 collect any delinquent court-ordered [~~penalties,~~] fees, fines,
7 [~~restitution,~~] sanctions, and court costs[~~, including juvenile~~
8 ~~monetary assessments~~]. Any fees or costs associated with the
9 collection efforts shall be added to the amount due and retained
10 by the collection agency as its payment; provided that no fees
11 or costs shall exceed fifty per cent of the amount collected."

12 SECTION 2. Section 706-642, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§706-642 Time and method of payment.** (1) When a
15 defendant is sentenced to pay a fee, fine, or restitution, the
16 court may grant permission for the payment to be made within a
17 specified period of time or in specified installments. If no
18 such permission is embodied in the sentence, the fee, fine, or

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1 restitution shall be payable forthwith by cash, check, or ~~by~~ a
2 credit card approved by the court.

3 (2) When a defendant sentenced to pay a fee, fine, or
4 restitution is also sentenced to probation, the court may make
5 the payment of the fee, fine, or restitution a condition of
6 probation.

7 (3) When a defendant sentenced to pay a fee or fine is
8 also ordered to make restitution or reparation to the victim or
9 victims, or to the person or party who has incurred loss or
10 damage because of the defendant's crime, the payment of
11 restitution or reparation shall have priority over the payment
12 of the fee or fine, pursuant to section 706-651. No ~~[fine]~~
13 payment shall be ~~[collected]~~ applied to a fee or fine until the
14 restitution or reparation order has been ~~[satisfied.]~~ paid in
15 full."

16 SECTION 3. Section 706-644, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§706-644 Consequences of nonpayment; imprisonment for**
19 **contumacious nonpayment; summary collection.** (1) When a
20 defendant in district court is sentenced pursuant to section
21 706-605, granted a conditional discharge pursuant to section
22 712-1255, or granted a deferred plea pursuant to chapter 853,

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1 and the defendant is ordered to pay a fee, fine, or restitution,
2 whether as an independent order, as part of a judgment and
3 sentence, or as a condition of probation or deferred plea[
4 and]:

5 (a) If the defendant was ordered to pay restitution and
6 has not yet paid all restitution in full, the court
7 shall set a proof of compliance hearing for the
8 defendant; provided that the court may further order
9 that the defendant need not appear for the proof of
10 compliance hearing if all restitution has been paid in
11 full before a designated date that may be earlier than
12 the proof of compliance hearing date. At each proof
13 of compliance hearing for the defendant, if the
14 defendant appears and is in compliance with the court-
15 ordered payments but has not yet paid all restitution
16 in full, the court shall order a further proof of
17 compliance hearing within one year or as soon as
18 practicable until the restitution has been paid in
19 full. If the defendant defaults in the payment
20 thereof [or of any installment], the court[, upon the
21 motion of the prosecuting attorney or upon its own
22 motion, may] shall require the defendant to show cause

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1 why the defendant's default should not be treated as
2 contumacious, and ~~[may]~~, if the defendant fails to
3 appear, the court shall issue a summons or a warrant
4 of arrest for the defendant's appearance. Unless the
5 defendant shows that the defendant's default was not
6 attributable to an intentional refusal to obey the
7 order of the court, or to a failure on the defendant's
8 part to make a good faith effort to obtain the funds
9 required for the payment, the court shall find that
10 the defendant's default was contumacious and may order
11 the defendant committed until the ~~[fee, fine,]~~
12 restitution~~[r]~~ or a specified part thereof is paid.
13 Regardless of whether the court finds that defendant's
14 default was contumacious, the court shall order
15 further proof of compliance hearings every six months
16 or less until the court is satisfied that the
17 defendant will appear and remain in compliance with
18 the court-ordered payments. Once satisfied, the court
19 shall resume ordering a further proof of compliance
20 hearing within one year or as soon as practicable
21 until the restitution has been paid in full; or

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1 **(b) If the defendant was ordered to pay fines, fees, or**
2 **both, the court may set a proof of compliance hearing**
3 **for the defendant; provided that the court may further**
4 **order that the defendant need not appear for the proof**
5 **of compliance hearing if all fines and fees have been**
6 **paid in full before a designated date that may be**
7 **earlier than the proof of compliance hearing date. If**
8 **a proof of compliance hearing is set and the defendant**
9 **defaults in the payment of fines or fees, the court**
10 **may:**

11 **(i) Refer the outstanding fines, fees, or both to the**
12 **collection agency or licensed attorney contracted**
13 **pursuant to section 601-17.5; or**

14 **(ii) Require the defendant to show cause why the**
15 **defendant's default should not be treated as**
16 **contumacious and if the defendant fails to**
17 **appear, the court may issue a summons or a**
18 **warrant of arrest for the defendant's appearance.**
19 **Unless the defendant shows that the defendant's**
20 **default was not attributable to an intentional**
21 **refusal to obey the order of the court, or to a**
22 **failure on the defendant's part to make a good**

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1 faith effort to obtain the funds required for the
2 payment, the court may find that the defendant's
3 default was contumacious and may order the
4 defendant committed until the fee, fine, or a
5 specified part thereof is paid.

6 (2) When a fee, fine, or restitution is imposed on a
7 corporation or unincorporated association, it [~~is~~] shall be the
8 duty of the person or persons authorized to make disbursement
9 from the assets of the corporation or association to pay it from
10 those assets, and their failure to do so may be held
11 contumacious unless they make the showing [~~required~~] that their
12 failure was not attributable to an intentional refusal to obey
13 the order of the court, or to a failure to make a good faith
14 effort to obtain the funds required for the payment. If the
15 corporation or unincorporated association was sentenced as a
16 defendant in district court, the proceedings shall be as
17 provided in subsection (1).

18 (3) The term of imprisonment for nonpayment of fee, fine,
19 or restitution shall be specified in the order of commitment,
20 and shall not exceed one day for each \$250 of the fee [~~or~~],
21 fine, or restitution, thirty days if the fee [~~or~~], fine, or
22 restitution was imposed upon conviction of a violation or a

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1 petty misdemeanor, or one year in any other case, whichever is
2 the shorter period. A person committed for nonpayment of a fee
3 or fine shall be given credit toward payment of the fee or fine
4 for each day of imprisonment, at the rate of \$250 per day.

5 (4) If it appears that the defendant's default in the
6 payment of a fee, fine, or restitution is not contumacious, the
7 court may make an order allowing the defendant additional time
8 for payment, reducing the amount of each installment, or
9 revoking the fee, fine, or the unpaid portion thereof in whole
10 or in part, or converting the unpaid portion of the fee or fine
11 to community service. A defendant shall not be discharged from
12 an order to pay restitution until the full amount of the
13 restitution has ~~[actually]~~ been ~~[collected or]~~ paid in full and
14 accounted for.

15 (5) Unless discharged by payment or, in the case of a fee
16 or fine, service of imprisonment pursuant to subsection (3), an
17 order to pay a fee, fine, or restitution, whether as an
18 independent order, as a part of a judgment and sentence, or as a
19 condition of probation or deferred plea pursuant to chapter 853,
20 may be collected in the same manner as a judgment in a civil
21 action. The State or the victim named in the order may collect
22 the restitution, ~~[including costs, interest, and attorney's~~

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1 ~~fees, pursuant to section 706-646. The]~~ and the State may
2 collect the fee or fine, ~~[including]~~ in addition to any costs,
3 interest, and attorney's fees, pursuant to section 706-647.

4 (6) Attorney's fees, costs, and interest shall not be
5 deemed ~~[part of the penalty,]~~ a fee, fine, or restitution for
6 purposes of this section, and no person shall be imprisoned
7 under this section in default of payment of attorney's fees,
8 costs, ~~[and]~~ or interest.

9 (7) For purposes of this section, "default" means failure
10 to pay a fee, fine, or restitution within a period of time
11 specified by the court pursuant to section 706-642, or failure
12 to pay three consecutive installments of a fee, fine, or
13 restitution, whichever occurs first."

14 SECTION 4. Section 806-73, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) All adult probation records shall be confidential and
17 shall not be deemed to be public records. As used in this
18 section, ~~[the term]~~ "records" includes but is not limited to all
19 records made by any adult probation officer in the course of
20 performing the probation officer's official duties. The
21 records, or the content of the records, shall be divulged only
22 as follows:

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(1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:

(A) An adult probation officer, a court officer, a social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or

(B) A state or federal criminal justice agency, or state or federal court program that~~[+]~~ is:

(i) ~~[Is providing]~~ Providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or

(ii) ~~[Is responsible]~~ Responsible for the preparation of a report for a court;

(2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:

(A) A law enforcement officer as defined in section 710-1000 to locate the probationer for the purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or

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(B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered [~~penalties,~~] fines, [~~restitution,~~] fees, sanctions, and court costs pursuant to section 601-17.5;

(3) A copy of a presentence report or investigative report shall be provided only to:

(A) The persons or entities named in section 706-604;

(B) The Hawaii paroling authority;

(C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;

(D) The intake service centers;

(E) In accordance with applicable law, persons or entities doing research; and

(F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who[+] is engaged in the:

(i) [~~Is engaged in the supervision~~] Supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or

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1 (ii) ~~[Is engaged in the preparation]~~ Preparation
2 of a report for a court regarding a
3 defendant or offender convicted and
4 sentenced in the courts of Hawaii;

5 (4) Access to adult probation records by a victim, as
6 defined in section 706-646 to enforce an order filed
7 pursuant to section 706-647, shall be limited to the:

8 (A) Name and contact information of the defendant's
9 adult probation officer;

10 (B) Compliance record of the defendant with
11 court-ordered payments;

12 (C) Amounts paid by the defendant;

13 (D) Dates of the payments made by the defendant;

14 (E) Payee of payments made by the defendant; and

15 (F) Remaining unpaid balance,

16 without the assessment of a filing fee or surcharge;

17 (5) Upon written request, the victim, or the parent or
18 guardian of a minor victim or incapacitated victim, of
19 a defendant who has been placed on probation for an
20 offense under section 580-10(d)(1), 586-4(e),
21 586-11(a), or 709-906 may be notified by the
22 defendant's probation officer when the probation

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1 officer has any information relating to the safety and
2 welfare of the victim;

3 (6) Notwithstanding paragraph (3) and upon notice to the
4 defendant, records and information relating to the
5 defendant's risk assessment and need for treatment
6 services; information related to the defendant's past
7 treatment and assessments, with the prior written
8 consent of the defendant for information from a
9 treatment service provider; provided that [~~for~~]
10 release of any substance abuse records [~~such release~~]
11 shall be subject to title 42 Code of Federal
12 Regulations part 2, relating to the confidentiality of
13 alcohol and drug abuse patient records; and
14 information that has therapeutic or rehabilitative
15 benefit, may be provided to:

16 (A) A case management, assessment, or treatment
17 service provider assigned by adult probation to
18 service the defendant; provided that [~~such~~] the
19 information shall be given only upon the
20 acceptance or admittance of the defendant into a
21 treatment program;

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- 1 (B) Correctional case manager, correctional unit
2 manager, and parole officers involved with the
3 defendant's treatment or supervision; and
4 (C) In accordance with applicable law, persons or
5 entities doing research;
6 (7) Probation drug test results may be released with prior
7 written consent of a defendant to the defendant's
8 treating physician when test results indicate
9 substance use [~~which~~] that may be compromising the
10 defendant's medical care or treatment;
11 (8) Records obtained pursuant to section 704-404(9) may be
12 made available as provided in that section;
13 (9) Any person, agency, or entity receiving records, or
14 contents of records, pursuant to this subsection shall
15 be subject to the same restrictions on disclosure of
16 the records as Hawaii state adult probation offices;
17 and
18 (10) Any person who uses the information covered by this
19 subsection for purposes inconsistent with the intent
20 of this subsection or outside of the scope of the
21 person's official duties shall be fined no more than
22 \$500."

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1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

7
8 INTRODUCED BY:



9 BY REQUEST

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Report Title:

Penal Code; Fees, Fines, and Restitution; Collections;
Consequences of Non-Payment

Description:

Requires the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fees, fines, sanctions, and court costs. Allows courts to specify a period of time or installments for payment of fines, fees, and restitution, and requires the defendant to show cause if the defendant defaults on the payments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO COURT-ORDERED PAYMENTS.

PURPOSE: To require the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fines, fees, sanctions, and court costs; expressly allow courts to grant a specified period of time or specified installments, for payment of fees and restitution; and require district courts to set proof of compliance hearings in cases where the defendant owes restitution to a victim.

MEANS: Amend sections 601-17.5, 706-642, 706-644, and 806-73(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill addresses a recent Supreme Court decision (*State v. Fay*, 154 Haw. 305, 550 P.3d 1163 (2024)) that interpreted section 706-644, HRS, as prohibiting the courts from ordering proof of compliance hearings, unless and until a defendant defaults on payment.

Fees, fines, and restitution ordered by the court in criminal cases serve important purposes and should be paid by the defendants ordered to pay them. However, without proof of compliance hearings, there is no way for the court to know whether a defendant is actually paying these court-ordered fees, fines, or restitution. There is also no definition for the term "default," for purposes of implementing section 760-644, HRS.

Impact on the public: This bill will assist victims of crime by re-establishing the court's practice of setting proof of compliance hearings that was abolished by the recent Hawaii Supreme Court decision in

State v. Fay. This bill will also help to strengthen the public's confidence that sentences handed down by courts are monitored and enforced.

Impact on the department and other agencies:
This bill will assist state and county prosecutors in enforcing payment of fines, fees, and restitution. The Judiciary may be impacted by having to set additional proof of compliance hearings; however, it should be noted that these hearings were already occurring prior to the Hawaii Supreme Court's decision in *State v. Fay*.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Prosecutors, county police departments, and the Judiciary.

EFFECTIVE DATE: Upon approval.